

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15490 of Willie and Yvonne Joyner and Catherine Buchanan, as amended, pursuant to 11 DCMR 3108.1, for special exceptions under Sections 2116.2 to allow parking spaces to be located in the front yard and Sections 206 and 207 to establish a private school and child development center of 124 students and 21 staff in the basement through second floor in an R-1-A District at premises 5501 Utah Avenue, N.W. (Square 2308, Lots 21 and 22).

HEARING DATES: April 17 and May 22, 1991

DECISION DATES: June 5 and July 10, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. At its public hearing of April 17, 1991, the Board of Zoning Adjustment amended the subject application to reflect the relief cited in a revised memorandum from the Zoning Administrator, dated April 12, 1991. The amended relief eliminated the need for a variance from the parking requirements as originally advertised and cited the need for special exception relief to allow for the location of the parking spaces in the front yard. The Board noted that the public hearing notice identified an issue related to parking and the proposed amendment directly addresses the parking issue. Therefore, the Board determined that the amended relief was within the parameters of the public hearing notice and readvertisement of the case would not be necessary.

2. The square in which the subject property is located is bounded by Oregon Avenue to the east, Utah Avenue to the west, Military Road to the south and McKinley Place to the north. The property is located on the east side of Utah Avenue, immediately adjacent to Saint John's College High School at 27th Street and Military Road and is known as premises 5501-5503 Utah Avenue, N.W. It is located in an R-1-A District.

3. The subject site consists of two lots which were created as part of a subdivision of former Lot 803 into three lots of record in 1989. The former Lot 803 contained 34,266 square feet of lot area and was developed with a single-family detached dwelling. The two newly created lots which are the subject of this application are irregularly shaped and the width of the site varies continuously from the frontage along Utah Avenue to the rear of the site. The topography of the site is steeply sloped along Utah Avenue from west to east and to the rear of the existing dwelling. The third lot created by the subdivision is improved with a recently constructed single-family dwelling.

4. The area surrounding the subject site is primarily developed with single-family dwellings. Immediately southeast of the site is Saint John's College High School which occupies a site of approximately 27.9 acres.

5. The R-1-A zone permits single-family dwellings, as well as certain institutional uses such as a church or an embassy. The R-1-A District also permits the proposed use as a child development center and private school as a special exception subject to Board approval. The applicant requests special exception approval to establish the use of the subject property as a private school and child development center and special exception approval to allow for the location of parking spaces within the front yard of the subject site.

6. The standards by which the Board may approve special exception relief to allow for the location of a child development center in an R-1-A District are set forth in Section 206 of the Zoning Regulations. Pursuant to Section 206, the Board may grant special exception relief for a child development center subject to the following criteria:

- a. The center is capable of meeting all applicable code and licensing requirements;
- b. The center is located and designed so as not to create any objectionable traffic condition and any unsafe condition for picking up and dropping off children;
- c. The center provides sufficient off-street parking to meet the reasonable needs of teachers, other employees, and visitors; and,
- d. The center, including any outdoor play space provided, is located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.

In addition, the Board may also require special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties.

7. The standards by which the Board may approve a special exception to locate a private school in an R-1-A District are set forth in Section 207 of the Zoning Regulations. Pursuant to Section 207, the Board may grant special exception relief to allow a private school subject to the following criteria:

- a. The private school is located so that there will be no objectionable impacts on adjacent or nearby properties due to noise, traffic, number of students or other objectionable conditions; and,
- b. Ample parking space is provided to accommodate students, teachers and visitors.

8. Section 2116.2 of the Zoning Regulations provides that parking spaces may be located within a side yard or the rear yard, but not the front yard of the site. In the instant case, the applicant proposes to provide six of the eight required parking spaces in the front yard along the driveway. Section 2116.6 provides the standards by which the Board may determine that it is not practical to locate the spaces in accordance with Section 2116.2. The criteria set forth in Section 2116.6 requires that the Board determine that the applicant has demonstrated one or more of the following:

- a. Unusual topography, grades, shape, size or dimensions of the lot;
- b. The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets;
- c. Traffic hazards caused by unusual street grades; or,
- d. The location of required parking spaces elsewhere on the same lot or on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties.

9. The Aidan Montessori School, hereinafter referred to as the applicant, has operated a child development center and private school in the Chevy Chase community for the past 30 years in the Temple Sinai building located at 3100 Military Road, N.W. The school is a small, nonprofit, parent-owned school. Since its founding in 1961, the applicant has accepted children without regard to race, color, or creed. The applicant accepts children on a first-come, first-served basis. The proposed school, like the existing facility, would be designed to accommodate toddler, primary, and elementary grades for children between the ages of 18 months and nine years.

10. The applicant faces displacement from its current quarters at the Temple Sinai building because of the success of Temple Sinai's religious school and its desire to develop its own child development center. The applicant desires to continue

providing its services to the immediate community, and therefore, has been seeking an appropriate site to locate a permanent facility within the immediate neighborhood. The proposed site is located approximately five blocks from the existing facility within the Chevy Chase area of the city.

11. The applicant's representative testified that of the 122 families currently served by the school, 60 percent live in the Chevy Chase area and, therefore, should be considered as residents of the neighborhood. The applicant provides the Chevy Chase neighborhood with much needed educational programs for children under the age of five because the D.C. Public School system does not provide pre-kindergarten programs for all families in need of such services and provides no nursery school programs.

12. The applicant's representative testified that the proposed facility and accessory playground space have been designed to meet all applicable code and licensing requirements and that a representative of the D.C. Department of Consumer and Regulatory Affairs, Childcare Licensing Office reviewed the applicant's plans and conducted an inspection of the subject site.

13. The applicant's representative testified that the drop off and pickup of children is staggered due to the nature of the school's instructional programs. The subject site is located approximately five blocks from the existing school in the Temple Sinai building. Because of the proximity between its existing location and the subject site, the applicant testified that the school's present traffic patterns provide the basis for evaluating the traffic patterns for the proposed school. The applicant expects that commuting patterns will remain virtually unchanged.

14. Based on existing traffic patterns at the current location, approximately eight children arrive between the hours of 7:30 a.m. and 8:45 a.m. for the before-school program. The remainder of the children begin arriving at approximately 8:45 a.m. Between 8:45 a.m. and 9:10 a.m., approximately 58 cars and one van dropoff children. At 11:00 a.m., approximately ten cars pickup children. At noon, approximately 24 cars and one van arrive to pickup approximately 65 children. At 3:00 p.m., 17 cars and one van pickup all remaining children except for those enrolled in the after-school program. Approximately 16 children are enrolled in the after-school program. Approximately 16 cars arrive between the hours of 4:00 p.m. and 6:30 p.m. to pickup these children. The maximum number of cars arriving or departing the site at any time would be 58 cars and one van during a 25-minute period. The applicant's representative testified that the existing traffic patterns create no traffic disturbances at the current site and that a similar situation would be expected at the subject site.

15. The applicant's representative testified that school-wide activities occurring at night are rare and typically consist of three general meetings and a science fair or an art fair. With respect to school-wide weekend events, the applicant typically has a holiday program once per year, as well as a science or art fair.

16. The applicant proposes no changes in its existing operations. A total of 140 students are currently enrolled in at least one of the existing programs. The applicant's representative testified that the largest number of teachers and staff are employed at the site between the hours of 8:30 a.m. and 12:30 p.m. when 19 employees are present at the site.

17. The applicant's representative testified that a fenced-in and landscaped rear yard would be used for the toddler play area and a fenced-in and buffered front yard area would be used for the primary and elementary play area. The average age of toddlers is two. Outdoor play hours would be staggered so that all children would not be outdoors at one time. All indoor and outdoor activities would be supervised by teachers and staff.

18. The applicant proposes to use the first and second floors of the existing dwelling and to construct an addition for use as a child development center and private school at the subject site. The proposed addition contains approximately 6,900 square feet of floor area and meets all the requisite set back and area requirements for structures in the R-1-A District. The applicant's representative noted that the size and location of the existing structure and the proposed addition is permitted as a matter of right based on the zoning and lot size. The applicant's representative testified that the proposed facility would be approximately the same size as its existing facilities in the Temple Sinai building with respect to both net and gross square feet.

19. The applicant's representative testified that the proposed addition to the existing dwelling would be architecturally compatible with the existing structure. The proposed addition is two stories in height and the gutter and eave lines would match the lines of the existing structure. The applicant's representative noted that the setback of the proposed addition from the western property line ranges from ten to 12 feet, therefore exceeding the minimum side yard requirements for the R-1-A District.

20. The applicant's representative testified that there would be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions based on the school's activities and the location of the proposed addition. In order to minimize visual and noise impacts, the proposed addition would be located to the rear of the existing structure, well separated from the road. The proposed addition,

although it would have windows on the side of the structure adjacent to 5507 Utah Avenue, would provide translucent glass in the windows on that side to ensure maximum privacy for the adjacent property owners while still providing light to the interior of the proposed addition. The applicant's representative further testified that the proposed addition would not adversely impact the light and air to adjoining properties because the addition meets or exceeds the applicable zoning requirements for the R-1-A District. In addition, existing mature shade trees currently overshadow this residence.

21. The applicant's representative testified that the site plans originally submitted with the application were subsequently revised to provide for appropriate fencing and landscaping. The outdoor play area located in the front yard would be approximately 5,000 square feet in area and would be enclosed by a four-foot high wooden fence. Five additional trees would be planted immediately in front of the fence in the public space adjacent to Utah Avenue. A three-foot berm would be constructed along Utah Avenue for the purpose of abating the noise impact from the front play area on the residences across Utah Avenue. The rear outdoor play area would be approximately 800 square feet in size and enclosed by a three-foot high fence. Fast-growing trees, five to six feet in height, would be provided along the side of the rear play area adjacent to 5507 Utah Avenue to provide additional visual buffering. Both play areas would be improved with park-like play equipment made of wood. A ground covering of wood chips would be provided. The revised site plan also includes the provision of bollards in front of the berm along Utah Avenue to ensure the safety of the children in the front play area.

22. The applicant's representative testified that the houses on the south side of Utah Avenue are over 160 feet away from the center of the front play area. The applicant's representative asserted that the three-foot high berm and the four-foot high fence, coupled with additional landscaping along Utah Avenue, would serve as an adequate visual and audial buffer between the proposed school and the single-family residences across Utah Avenue to the south.

23. The applicant's representative testified that the proximity of the subject site to St. John's enhances the suitability of the subject site for use as a school. The subject site abuts an unused wooded strip of land adjacent to St. John's tennis court and track area.

24. The applicant's representative testified that access to the subject site would be via the existing driveway from Utah Avenue. The existing driveway would be widened to 20 feet and contain a circular turnaround area for drop off and pickup of children.

25. The applicant's representative testified that the irregular shape of the subject lot, topography of the site, the varying width of the northern side yard, and the narrowness of the western side yard combine to create a practical difficulty upon the owner in locating the required parking spaces on the site in accordance with the requirements of the Zoning Regulations. The applicant presented revised plans evidencing the provision of eight on-site parking spaces. Six of the proposed parking spaces are proposed to be located along the driveway in front of the structure and two additional stacked parking spaces are proposed to be located in the southern side yard. The applicant's representative testified that location of the proposed parking spaces would not obstruct emergency vehicles, hinder emergency operations or impede trash collection.

26. The applicant's representative testified that the eight on-site parking spaces provided exceed the requirements of the Zoning Regulations which require six on-site parking spaces for the proposed use. The applicant's representative testified that the applicant's peak demand for parking is fourteen spaces. The applicant's representative testified that the on-site parking provided by the applicant would further be augmented by eight existing on-street parking spaces available immediately in front of the site on Utah Avenue. The applicant's representative testified that the on-street parking is unrestricted and available on a first-come, first-served basis.

27. The applicant's representative testified that all drop off and pickup of children will occur at the top of the circular portion of the proposed driveway. The applicant further proposed to install a sidewalk along the driveway of the site for students who are walked to school by their parents.

28. The applicant's representative testified that the location and design of the proposed facility would create no objectionable traffic condition or unsafe condition for picking up and dropping off children. The applicant's representative testified that the driveway of the site is an appropriate location for access to the project because there is good visibility from the site of traffic approaching on Utah Avenue and 27th Street.

29. The applicant's representative testified that the subject site is well served by public transportation. Metrobus Routes E-2, E-3, E-4 and E-5 run along Military Road one block south of the subject site. Metrobus Routes E-8, M-3 and M-4 stop at Utah and Nebraska Avenue.

30. At its public hearing of April 17, 1991, the Board waived its seven-day filing requirement to accept the report of the Office of Planning.

31. By memorandum dated April 11, 1991 and by representative at the public hearing, the Office of Planning (OP) recommended denial of the application. The Office of Planning was of the opinion that, although the applicant's proposal is meritorious in design and quite creative in attempting to fit a fairly large program onto a fairly small site, the proposed intensive use of the site would likely have a number of adverse impacts on the surrounding low-density residential community, as follows:

- a. Parking overflow into the community because of a deficit of on-site parking spaces;
- b. Noise impacts from unbuffered play areas;
- c. Adverse impact on the light and air to the adjacent residence because of the substantial size of the addition which cannot readily be buffered or screened; and,
- d. Potential child safety issues.

The Office of Planning was of the opinion that the subject site was too small to contain the proposed intensity of use and provide solutions to buffer or otherwise mitigate the potential impacts of the use.

The Office of Planning representative noted that the Office of Planning report did not address the specific revisions proposed by the applicant in an effort to address the concerns of the opposition as presented to the Board at the public hearing.

32. By memorandum dated April 9, 1991, the D.C. Department of Public Works (DPW) offered no objection to the proposal, provided the applicant meet the following conditions:

- a. That the applicant coordinate the final design of the driveway and semi-circular driveway with the DPW's Bureau of Traffic Services;
- b. That the applicant provide no fewer than 14 on-site parking spaces to accommodate teachers, parents, visitors and volunteers likely to come to the site by automobile;
- c. That the applicant install sidewalks at this location with a minimum paved width of six feet and approximately 440 feet in length from the driveway towards McKinley Street; and,
- d. That the applicant install two sets of flashing beacons at the peak of the 45 degree curve at both approaches on Utah Avenue to minimize any potential safety problems.

33. By memorandum dated March 28, 1991, the D.C. Department of Recreation and Parks (DRP) recommended that approval of the project be conditioned on the submission of a site plan that contains design information which, at a minimum, includes the type and layout of play apparatus and other features; the height and type of fencing proposed for the periphery of the property; and, a statement with respect to whether the proposed outdoor play area will meet Department of Consumer and Regulatory Affairs requirements and standards for the proposed number of children. The DRP noted that the information provided with BZA Form 2 is inadequate for proper agency review. The DRP recommended that, at a minimum, agencies which are asked to comment on cases should be provided with a site plan indicating existing or proposed buildings; the site acreage; parking areas, if applicable; and, areas devoted to open space and/or recreation.

34. By letter dated March 18, 1991, the Metropolitan Police Department (MPD) offered no opposition to the application. The MPD was of the opinion that the proposal would not affect the public safety in the immediate area nor generate an increase in the level of police services now being provided.

35. By memorandum dated March 21, 1991, the D.C. Fire Chief noted that the Fire Department evaluated the zoning request to determine its impact on emergency operations. Based on that review, the Fire Department offered no objection to the granting of the subject application.

36. By letter dated April 8, 1991, the Superintendent, D.C. Public Schools, offered no opposition to the granting of the application. Based on review of the materials submitted with respect to the subject application, the Superintendent indicated that the D.C. Public Schools did not anticipate any adverse effect upon its facilities or operations as a result of the activities of the proposed facility.

37. By memorandum dated April 2, 1991, the Department of Finance and Revenue offered no objection to the application.

38. By memorandum dated April 16, 1991, the Department of Consumer and Regulatory Affairs, Service Facility Regulation Administration, indicated that the proposed child development center and private school was capable of compliance with all licensing requirements, including program space requirements.

39. At the conclusion of the presentation by the applicant and the Office of Planning at the public hearing of April 17, 1991, the Advisory Neighborhood Commission 3G (ANC 3G) representative requested that the Board suspend the public hearing on the application to afford the ANC and the opposition an opportunity to

review and respond to the revisions to the original proposal presented by the applicant prior to finalizing its recommendation. The Board continued the application until its public hearing of May 22, 1991.

40. The Board left the record open for the following:

- a. The submission by the applicant of revised plans and additional information regarding the provision of a landscaped berm in front of the subject property to minimize visual and noise impact; the reservation of on-street parking spaces for exclusive use by the applicant; and, the status of negotiations with St. John's concerning the provision of additional parking spaces on St. John's campus;
- b. A supplemental report from the Office of Planning; and,
- c. The ANC resolution based on the revised proposal.

41. The applicant filed its supplemental information and revised plans on May 1, 1991. The revised plans indicated the provision of a landscaped berm in the public space in front of the property, as suggested by OP at the public hearing to provide an attractive landscaped appearance and to minimize noise and visual impacts from the playground located in the front yard of the subject site. The plans also depict the location of the proposed eight on-site parking spaces, fencing, and additional landscaping on the site, as well as bollards to provide additional safety to the playground from the traffic along Utah Avenue.

42. The applicant indicated that it is not possible to reserve the existing on-street parking spaces for the exclusive use of the proposed facility. The applicant noted that these parking spaces are available on a first come, first served basis and that there is currently little demand for the use of these spaces because the surrounding residences provide off-street parking. The applicant argued that the combined use of the on-site and on-street parking exceeds its maximum peak hour parking demand of 14 spaces. The applicant further stated that visitors to the site would be scheduled for off-peak parking hours.

43. The applicant indicated that its efforts to purchase additional property for parking purposes from St. John's have been postponed pending the Board's final decision on the application. The applicant noted that the on-site parking provided meets the zoning requirement for parking and, further, that its assertion that available parking spaces are adequate to meet the parking demand of the facility are based on the proposed on-site parking and adjacent on-street parking.

44. By memorandum dated May 8, 1991, the Office of Planning submitted a supplemental report addressing the following issues:

- a. Whether eight parking spaces could be reserved along Utah Avenue, N.W. in the public right-of-way for the school's exclusive use when it is in session.
- b. Whether the measures proposed by the applicants at the public hearing are sufficient to mitigate concerns about the potential noise level increase in the community and about safety issues.

With respect to parking, the OP noted that DPW has indicated that on-street parking spaces cannot be reserved for a private school. The OP also noted that concerns have arisen with respect to the two parking spaces located within the general area of where the trash receptacles would be placed on the site because they could obstruct emergency vehicles.

The OP was of the opinion that the berm, the bollards, the flashing beacons and the additional landscaping are an improvement over the originally proposed plans. However, OP was of the opinion that the issues related to adequate parking and safety issues surrounding the likely double parking and drop off of some number of students, and noise due to the increased activity on the site, particularly the play area in front, cannot be mitigated.

The OP was further of the opinion that the impacts are cumulative and that the subject site is not large enough to accommodate the project in a manner which is fair to both neighbors and children.

45. By letter dated May 8, 1991, ANC-3G indicated that it reviewed the applicant's revised submission and voted six to one to reaffirm its position in opposition to the application. The ANC also indicated that it voted against holding a special meeting of the ANC to review the revised plans because the Commissioners did not see any changes in that document to warrant a full public meeting.

46. By letters dated April 9, and May 8, 1991, and by representative at the public hearing, ANC 3G expressed the following issues and concerns:

- a. The size of the proposed structure is too large for the subject small site and would be inconsistent with existing neighborhood development of single-family dwellings interspersed with institutional facilities located on large lots and buffered from residential areas by wide strips of green, open space.

- b. The proposed structure will adversely affect residences in the neighborhood, in particular the adjoining residence to the north, in terms of the visual impact of such a large structure approximately 12 feet from the property line and the structure's impact on the existing light, air, and privacy of the adjacent dwelling. In addition, the presence of the proposed berming and bollards is not compatible with existing development.
 - c. The proposed parking is not sufficient to accommodate the needs of the proposed facility. There is no guarantee that adjacent on-street parking will be available for visitors to the facility; the neighborhood currently suffers from overflow parking from St. John's; the proposed on-site parking does not satisfy the DPW recommendation; the location of some of the proposed on-site parking could be problematic; and, the proposed number of parking spaces is inadequate to accommodate the actual demand for parking which would be generated by the proposed facility.
 - d. The proposal would create or increase existing dangerous traffic conditions due to the sharp curve in the street; speeding and spillover traffic on 27th Street and Utah Avenue; the reduced width of traffic lanes if on-street parking is utilized; limited visibility for vehicles exiting the site; the lack of sidewalks in the area; the fact that 27th Street and Utah Avenue are designated as "snow emergency routes"; and, the high occurrence of motor accidents in the vicinity of the subject site.
 - e. The subject site is inappropriate for the proposed use in terms of the location of the play area with respect to child safety; the inadequate and poorly-sited parking spaces; and the proposed number of students would not be sufficient to produce revenues necessary to meet the facility's projected budgetary requirements.
47. By letter dated May 15, 1991, counsel for the applicant submitted a motion to strike the supplemental ANC report from the record. In support of the motion, counsel argued as follows:
- a. The basis for the continuation of the subject public hearing was to allow the ANC an opportunity to review the revised plans and take a position at a regularly scheduled ANC meeting. However, the ANC vote and report were made without the benefit of a further public hearing and community comments because the ANC declined to schedule a public meeting on the revised plans.

- b. The supplemental ANC report fails to meet the criteria set forth in 11 DCMR 3307.1(b), (c) and (d) which sets forth the standards to be met by the written ANC report.
- c. The ANC voted and prepared the report without the legal notice required by the ANC Act (D.C. Code Subsection 1-261(d)).

48. At the public hearing of May 22, 1991, the Chair denied the motion to strike the ANC report made by counsel for the applicant. The Chair noted that the motion addressed the supplemental report rather than the original report which was filed in compliance with the Board's rules. The Chair further noted that the testimony of the ANC representative indicated that all of the ANC Commissioners were furnished with copies of the revisions prior to their vote set forth in the May 8, 1991 report.

49. By memorandum dated April 30, 1991, the Department of Recreation and Parks (DRP), indicated that it had reviewed the applicant's revised plans with respect to playgrounds and open space, including a landscaping plan and fencing information. The DRP was of the opinion that the plans were lacking with respect to layout and materials proposed for the "Primary Play Yard." The DRP recommended that the Board condition approval of the application on the submission of a more comprehensively developed playground plan for that space. The DRP indicated that, at a minimum, the applicant should provide specifics on the type and location of play apparatus, safety ground cover under apparatus, and other open space features. The DRP further recommended that a higher fence should be considered, especially along the east side of the "Primary Play Yard" adjacent to the entrance driveway.

50. By letter dated May 15, 1991, and by witnesses present at the public hearing of May 22, 1991, counsel for the applicant responded to the post-hearing submissions by the OP and ANC-3G. With respect to the OP report, counsel for the applicant responded as follows:

- a. Reservation of on-street parking spaces.

As the applicant indicated in its supplemental report, DPW has indicated that the on-street parking spaces cannot be reserved. This issue, however, does not adversely impact the use of these spaces. As the applicant's transportation expert testified at the April 17, 1991 public hearing, eight parking spaces can be accommodated on-site, and eight unrestricted parking spaces are available on Utah Avenue immediately in front of the proposed school. The applicant's traffic consultant has stated that its peak demand is 14. The proposed 16 spaces more than adequately satisfy the applicant's demand for parking.

- b. The location of an additional two on-site spaces within the driveway of the subject site will not affect emergency operations.

The stacked spaces proposed are not located in the driveway's turnaround, but instead in the northeast section of the site near the proposed location for the three supercan trash receptacles. Therefore, cars parked in this area will not obstruct emergency vehicles nor hinder emergency operations.

- c. The location of the front play area will not create objectionable auditory impacts on neighboring property owners residing on the other side of Utah Avenue.

The third issue raised by the Office of Planning involves noise, safety and the potential cumulative noise impact from the proposed use of the front play area and St. John's outdoor activities. The applicant's architect testified that the houses on the south side of Utah Avenue are over 100 feet away from the edge of the front play area. A three-foot high berm and a four-foot high fence, coupled with additional landscaping along Utah Avenue, serve as an adequate buffer between the proposed school and the single-family residences across the street.

In terms of safety, the Office of Planning agreed that the bollards proposed along Utah Avenue adequately provides for the safety of children while they are at play.

The applicant disagrees with the Office of Planning's concern about cumulative noise impacts. The location of the site is ideal because it is adjacent to St. John's College High School. Because of the age of the students attending St. John's and the size of its student population, their outdoor activities and sporting events are more likely to occur in the afternoon and early evening and involve a larger group of students at any one time than those proposed by the applicant. The applicant proposes staggered outdoor play periods which will occur only between the hours of 10:30 a.m. and 1:10 p.m. The largest number of students (never exceeding 75) scheduled to play outdoors only occurs between 11:15 and 11:45, a 30-minute period. A cumulative noise impact is therefore unlikely.

- d. The applicant has provided the Department of Recreation and Parks with additional information concerning the size and type of play apparatus. The applicant is also willing to comply with any condition set by the Board in terms of height of the proposed fencing.

The Office of Planning addresses a report submitted to the record by the Department of Recreation and Parks, which recommends that the applicant submit more detailed information on the size and type of play apparatus and consider providing a higher wooden fence for the front play area. By letter dated May 15, 1991, Aidan's architect had provided the requested information to the Department of Recreation and Parks. It should also be noted that the Department of Consumer and Regulatory Affairs Service Facility Regulation Administration has reviewed the applicant's site plans and determined that the plans complied with the program space requirements. The program space requirements, 29 DCMR Section 328, provide in pertinent part, that the outdoor play area "shall be free from conditions which are or may be hazardous to the life or health of the children or infants."

e. Traffic issues.

The final issue raised by the Office of Planning in its report concerns the number of traffic accidents in the community within the past few years. According to applicant's traffic expert supplemental report, the data obtained from the Metropolitan Police Department and attached to the ANC report as Exhibits 5 and 6, indicated that a total of approximately 33 traffic accidents have occurred in the general vicinity of Military Road (near Aidan's present site) within a 19-month period. There appears to be no basis or support for the Office of Planning's statement that there were 69 traffic accidents in the vicinity of Military Road. As stated previously, the applicant does not minimize the seriousness of these accidents, but does note that the majority of these accidents occurred at Military Road and 30th Street.

51. With respect to the issues and concerns expressed by the ANC 3G, counsel for the applicant responded as follows:

- a. The size of the proposed structure, which includes a matter of right addition, is in compliance with the area requirements of the R-1-A District and with the classroom and play area requirements for child care licensing under the D.C. Department of Consumer and Regulatory Affairs.
- b. The potential visual or other objectionable impacts the proposed facility would have on neighborhood property can be mitigated through the imposition of conditions on the Board's approval of the project. The proposed addition is compatible with the architectural style and the gutter and eave lines of the existing structure. The windows closest to the adjacent residence will be translucent to minimize privacy impacts. Landscaping, berming and fencing would be provided to lessen any visual or auditory impacts from the structure or play areas.

- c. The proposed on-site parking exceeds the requirements of the Zoning Regulations. The six parking spaces required by zoning are located along the driveway and two additional on-site stacked parking spaces are located in the southern side yard. In addition, the applicant noted that eight unrestricted on-street parking spaces are located adjacent to the facility on Utah Avenue and are available on a first-come, first-serve basis. The applicant noted that plans to lease or purchase additional parking from St. John's would go forward if the project were approved by the Board.
- d. The proposed child development center and private school is located and designed so as to create no objectionable traffic condition or unsafe condition for picking up and dropping off children. The applicant has agreed to a condition that all children would be picked up and dropped off at the top of the driveway and escorted into the school by a staff person. A sidewalk would be installed along the driveway of the site for students who are walked to school by their parents. The applicant's transportation expert stated that the driveway of the subject site is an ideal location for access to the school because one can see up and down both Utah Avenue and 27th Street. Vehicular speed on the adjacent streets would be reduced by the presence of parked cars along the street, and flashing beacons installed along Utah Avenue in cooperation with the appropriate D.C. Government agencies. The applicant argues that the traffic data supplied by the ANC does not reflect a greater propensity for traffic accidents at this location than any other area. The traffic data supplied by the ANC indicates that at Aidan's current site, there were 33 accidents in a 19-month period and six accidents on Utah Avenue in six years, only one of which occurred in front of the subject site.

The applicant noted the report of the MPD, dated March 18, 1991, which indicated that the applicant does not appear to affect the public safety in the immediate area nor generate an increase in the level of police services now being provided.

The applicant argued that the fact that Utah Avenue and 27th Street is designated as a snow emergency route is irrelevant because the facility would be closed during inclement weather whenever D.C. Public Schools are closed.

The applicant reviewed the sidewalk issue and determined that providing a sidewalk only in front of the subject property, which would not be linked to any other sidewalk, would serve no purpose. On-street parkers or persons walking to the site

The applicant reviewed the sidewalk issue and determined that providing a sidewalk only in front of the subject property, which would not be linked to any other sidewalk, would serve no purpose. On-street parkers or persons walking to the site would walk either along the street or along the level area of public space.

- e. The applicant states that the proposed location and design of the child development center and private school will not create any objectionable conditions on neighboring properties in terms of traffic, parking, noise or visual impacts. In fact, the proposed use and design actually maintains the residential character of the neighborhood. Appropriate considerations and investments have been made for adequate landscaping, fencing and buffering. The applicant proposes to provide adequate parking. The addition has been designed to be compatible with the existing house. Although the surrounding area is primarily residential in character, it is defined both by the presence of single-family houses and St. John's College High School.

52. By letter dated May 15, 1991 and by testimony at the public hearing, ANC 3G responded to the post-hearing submission of the OP. The Single Member District Commissioner supported OP's conclusion that the subject site is not large enough to accommodate the proposed project. The ANC comments on several issues raised in the OP report are summarized as follows:

- a. Buffering to Reduce Noise Impact and Provide Safety:

The OP's statement that bollards located in the public space would compliment proposed berms as a safety precaution is not supported by the representative of the Bureau of Traffic Services, who indicated to ANC Commissioners that DPW opposes bollards in public space. In addition, an ANC survey of the immediate neighborhood determined that 12 families within close proximity to the site are retired or work at home which would dispute OP's statement that the children will be at play when many families are away from their homes and thus would not be affected by their noise.

- b. Updated information - Traffic accidents.

The OP's statement is incorrect with respect to the number of accidents. The OP statement was based on the ANC's submission to OP of Police Department printouts, one page of which was omitted and not received by the ANC until after its May 3, 1991 meeting.

- c. Flashing Beacon.

The ANC disagrees with OP's statement that the proposed flashing beacons represent a favorable improvement in the applicant's proposal.

53. The record contains over 30 letters and a petition with numerous signatures in support of the application. The majority of the persons in support of the application are residents of the Chevy Chase community. The general basis of support focused on the community's need for quality child care services in the Chevy Chase area and the compatibility of the proposed design with existing structures in the neighborhood. A video was presented at the hearing by two of the neighborhood parents. It provided information on the existing traffic patterns around the subject site, drop offs at the school's existing location, the school's participation in community events and the noise impact from the staggered play periods.

54. The Coalition to Preserve Our Neighborhood opposed the granting of the application through written submission and witnesses at the public hearing. The opposition is generally summarized as follows:

- a. The applicant does not meet the criteria set forth in 11 DCMR 206.4 and 207.3. Eight on-site parking spaces for 19 staff on-site from 8:30 a.m. to 12:30 p.m., Monday through Friday, are not adequate to accommodate the needs of teachers, other employees, and visitors likely to come to the site by automobile.
- b. The proposed use will result in a number of objectionable impacts on adjacent and nearby properties including adverse visual impacts due to the amount of paving and on-site parking in the front yard, as well as the proposed fencing and concrete bollards. The visual impact of the building addition on the adjacent property owners to the west is highly objectionable. The proposed screening of this view with evergreen trees is insufficient to mitigate this impact. The play yard in the front of the proposed school will generate noise which is objectionable to surrounding residences. Finally, the proposed use is likely to cause unsafe traffic conditions along Utah Avenue and 27th Street, N.W. The juncture of these two streets is a sharp curve which is difficult to negotiate. In addition, the drop off and pickup arrangement for students is unsafe because of the stacked parking along the driveway, the narrow turning radius and the long distance of the drop off area from the street.
- c. The granting of the application would set a precedent in which residential uses are displaced by institutional uses.

55. The record contains a petition from area residents in opposition to "a change in zoning from residential to institutional/school" use of the subject site. The Board notes that the subject application seeks only special exception relief and does not affect the existing zoning category of the subject site on surrounding neighborhood.

FINDINGS OF FACT:

1. The applicant is seeking special exception relief pursuant to Sections 2116.2, 206 and 207 of the Zoning Regulations. The Board finds that the applicant has not meet the requisite burden of proof for approval of the application under Sections 206 and 207. Because the Board finds that the applicant has failed its threshold burden, the Board declines to address the parking location issues as defined by Section 2116.2.

2. The Board notes that the applicant has undertaken substantial revisions to its original proposal in order to mitigate the perceived adverse impacts of the project on the neighborhood as set forth by the OP, the ANC, and the Coalition to Preserve Our Neighborhood. However, the Board finds that it is persuaded by the opposition that the proposed facility would be objectionable in terms of noise, traffic, and other objectionable conditions.

3. The Board finds that, although the project is able to comply with all of the area requirements of the R-1-A District, the irregular shape, varying width, location of existing improvements, and the steeply sloping topography of the site combined make it impossible for the applicant to situate the proposed improvements on the site in a manner which would have minimal impacts on the neighboring properties in terms of traffic, noise and visual impacts.

4. The Board further finds that, although the proposed on-site parking is in excess of that required by the Zoning Regulations, it is not sufficient to accommodate the parking demand the proposed facility would generate to accommodate its staff and visitors.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking special exception relief, the granting of which requires that the proposal meet the criteria set forth in 11 DCMR 206, 207, 2116.2 and 3108.1, that the relief requested can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and that the relief, if granted, will not tend to affect adversely the use of neighboring property.

With respect to the special exceptions to establish a private school and child development center, the Board concludes that the applicant has not met the requisite burden of proof. Based on the testimony and evidence of record, the Board concludes that the small size and irregular shape of the lot combined with the proximity of the existing and proposed structures to be adjacent dwelling and the proposed number of students and staff will result in objectionable conditions with respect to visual impacts, noise and traffic.

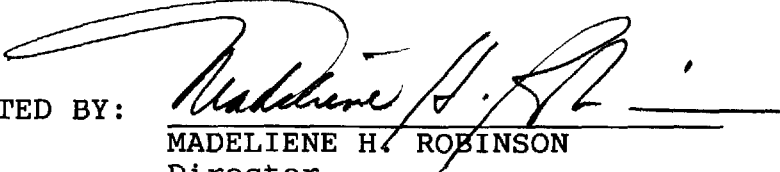
With respect to the special exception to allow parking spaces to be located in the front yard, the Board concludes that, lacking approval to establish the proposed private school and child development center, any issues relative to accessory parking are moot.

The Board concludes that the requested special exceptions will not be in harmony with the general intent and purpose of the Zoning Regulations and Map and, will tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that it has accorded the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Paula L. Jewell, Carrie L. Thornhill and Charles R. Norris to deny; Sheri M. Pruitt to deny by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: SEP 2 1993

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15490ord/ss/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15490

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 2 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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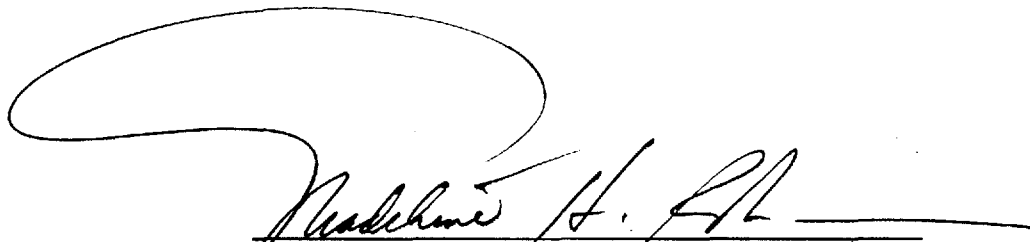
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MADELIENE H. ROBINSON
Director

DATE: _____ SEP 2 1993